

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STERLING SAVINGS BANK,  
a Washington State Chartered Bank,

Plaintiff,

v.

OPEN SOLUTIONS, INC.,  
a Delaware Corporation,

Defendant.

NO. CV-10-306-LRS

**ORDER GRANTING MOTION  
FOR PRELIMINARY INJUNCTION,  
*INTER ALIA***

**BEFORE THE COURT** are Defendant's Motion To Dismiss (Ct Rec. 5) and the Plaintiff's Motion For Preliminary Injunction (Ct. Rec. 12). Telephonic oral argument was heard on October 7, 2010.

For the reasons provided at the hearing, Defendant's Motion To Dismiss (Ct. Rec. 5) is **DENIED** and the Plaintiff's Motion For Preliminary Injunction (Ct. Rec. 12) is **GRANTED**. Defendant shall commence transferring Plaintiff's test files to Fidelity National Information Services, Inc. (FIS) forthwith, and if at all possible, no later than **5 p.m. PST on Friday, October 8, 2010**. Furthermore, Defendant shall provide any "deconversion assistance" to FIS attendant to the transfer of the files.

This court has jurisdiction to enter this mandatory injunction pursuant to Section 5.6 of the parties' "Information Technology Services Agreement." Defendant's retention of the test files, notwithstanding its receipt of the requested deconversion fee from Plaintiff, constitutes a "misappropriation" of Plaintiff's

**ORDER GRANTING MOTION  
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1 “Confidential Information.”<sup>1</sup> Even if it is not a “misappropriation,” Section 5.6  
 2 broadly provides for “the right to apply to any court of competent jurisdiction for  
 3 an order restraining any breach or threatened breach of this Agreement **or for any**  
 4 **other relief such party deems appropriate**” and that “[s]uch right shall be in  
 5 addition to any other remedy available to such party at law or in equity.”  
 6 (Emphasis added). The breach or threatened breach pertains to Section 4.5 which  
 7 entitles Plaintiff (“Customer”) to pay the deconversion fee under protest and  
 8 “without prejudice” to its rights while the Defendant (“Processor”) is obliged to  
 9 continue providing service. See also Section 6.4 (“Processor shall continue to  
 10 provide to Customer all Services upon the terms and conditions hereof during the  
 11 pendency of any dispute.” Entirely consistent with Section 5.6 is Section 6.3(c)  
 12 which states that nothing in Article VI (providing for dispute resolution via  
 13 arbitration) “shall be construed to limit or restrict a party’s right to seek equitable  
 14 relief.”

15 Continued retention of the test files is likely to cause Plaintiff irreparable  
 16 harm and therefore, per Section 5.6, Plaintiff is entitled to seek relief from this  
 17 “court of competent jurisdiction.” Serious questions pertaining to the merits of the  
 18 parties’ dispute remain to be resolved and they will be resolved by arbitration per  
 19 Article VI of the Agreement. Thus, the parties’ dispute as to the propriety of the  
 20 fee is to be resolved by arbitration, and it is also for the arbitrator to determine  
 21 whether all prerequisites to said arbitration (Section 6.2) have been satisfied. The  
 22 balance of the hardships and the equities tip sharply in favor of Plaintiff which has  
 23 paid the \$1.6 million deconversion fee, albeit under protest, but has not been  
 24 provided with its test files. The public interest favors the granting of this

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 27 <sup>1</sup> See Section 5.1 (“Processor acknowledges that all data received from  
 28 Customer and its designated Affiliates is strictly confidential . . .”).

1 injunction because of the potential impact a delayed deconversion could have  
2 upon the services Plaintiff provides to its banking customers.

3 **IT IS SO ORDERED.** The District Executive is directed to enter this order  
4 and forward copies to counsel.

5 **DATED** this 7th of October, 2010.

6 *s/Lonny R. Suko*

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LONNY R. SUKO  
Chief United States District Judge